

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 1945 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHANBHAI @ MANUBHAI TULSIDAS FATNANI

Versus

HARIBHAI JIVABHAI KOLI

Appearance:

MR DIVYESH SEJPAL for Petitioner
SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 20/11/97

ORAL JUDGEMENT

1. The applicant herein is the original claimant in Motor Accident Claim Petition No. 1173 of 1992 pending before the Motor Accident Claim Tribunal, Ahmedabad (Rural) at Mirzapur. The said claim petition arose out of the motor accident stated to have occurred within the territorial jurisdiction of the Motor Accident Claim Tribunal, Ahmedabad (Rural) at Mirzapur.

2. The applicant has moved this Court u/S. 24 of the Code of Civil Procedure read with section 166 (2) of the Motor Vehicles Act, 1988 (for short 'the Act') for transfer of the aforesaid M.A.C.P. No. 1173 of 1992 from the Motor Accident Claims Tribunal, Ahmedabad (Rural) at Mirzapur to Motor Accident Claims Tribunal at Bhavnagar. According to the case of the applicant-claimant the applicant as well as the opponents are either residing or having their offices at Bhavnagar and the witnesses are also from Bhavnagar. Under such circumstances, when the amended provisions of section 166(2) of the Act has made it permissible for the claimants to move claim petition before the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, it would be not only in the interest of justice, but it would be convenient to all the parties to have the claim petition tried and disposed of by the Motor Accident Claims Tribunal at Bhavnagar.

3. Rule was made returnable on 22/10/1997. No-one has appeared for the opponents, who have been served.

4. Mr. D.C. Sejpal, learned advocate appearing for the claimant relies upon the aforesaid uncontroverted facts for the purpose of supporting the applicant's claim for transfer of the petition in this Misc. Civil Application. Besides the facts of the present case, he has also relied upon the decision of this Court in Shermohammad Umarbhai V/s. Adambhai Isabhai and others rendered in M.C.A. No. 1780 of 1995 on 6/3/1996 (Coram : S.D. Shah, J.). The short decision reads as under :-

"This is an application for transfer of Motor Accident Claim Petition (MACP) No. 422/93 from Motor Accident Claims Tribunal, Junagadh to Motor Accident Claims Tribunal at Porbandar. The petition is filed in view of the amended provisions introduced in Motor Vehicles Act, 1988 which has come into force by 14/11/1995. Under the amended provision u/S. 166(2) an application for compensation u/sub.sec.(1) can be preferred by the claimant either to the tribunal in whose jurisdiction the accident occurred, the tribunal in whose jurisdiction the claimant resides or carries on business or within the limits of whose

jurisdiction the defendant resides. Unfortunately, when the claim petition was filed the aforesaid amendment did not come into force as the Motor Accident Claim Petition was filed in the year 1993.

2. Mr. Darshan Parikh appearing for the Insurance Co. has however pointed out to this court that earlier identical application for transfer was filed in this court being MCA No. 106/94 and B.C. Patel, J. has by speaking order dated 24/3/94 rejected said application for transfer of MACP. This particular fact is undoubtedly not stated in the present MCA which came to be introduced by way of amendment in the court. It is submitted that this fact was suppressed from this court and therefore court should reject this application also. Submission is thoroughly misconceived. Even if said fact was suppressed, which I do not think a deliberate suppression, the claimant has got a right under law to move application for transfer in view of amended provision which has come into force from 14/11/1994. My learned brother --B.C. Patel, J. had not the advantage of amended provision and therefore, such application was rejected. In my opinion, the present application is required to be granted as the applicant resides at Porbandar and even opponent nos. 1 & 2 also reside at Porbandar while the Insurance Co. has also got office at Porbandar. The transfer of petition, therefore, is not going to cause any inconvenience to any of the parties and in view of the aforesaid, this application is required to be granted and is granted and MACP No. 422/95 is directed to be transferred from MACT at Junagadh to MACT at Porbandar. Office is directed to send down the writ of this judgment to both the tribunals forthwith. Rule is made absolute accordingly. No costs."

5. In my opinion, bearing in mind the facts and circumstances as flowing from the present application, there is no reason why order similar to one which has been passed by this Court in the above referred decision be not passed in the present application.

In the result, transfer petition is granted and M.A.C.P. No. 1173 of 1992 is directed to be transferred from M.A.C.T., Ahmedabad (Rural) at Mirzapur to M.A.C.T. at Bhavnagar. Office is directed to send the writ of this judgment to both the Tribunals forthwith.

Rule is made absolute with no order as to cost.

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PVR